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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 DONATO CARDOZA-CASTILLO,

10 Petitioner,

11 v.

12 ICE FIELD OFFICE DIRECTOR,

13 Respondent.

Case No. C11-1547-JLR-JPD

REPORT AND
RECOMMENDATION

14
15 **I. INTRODUCTION AND SUMMARY CONCLUSION**

16 Petitioner Donato Cardoza-Castillo has filed a *pro se* Petition for Writ of Habeas Corpus
17 pursuant to 28 U.S.C. § 2241, which challenges the lawfulness of his continued detention
18 without bond by the United States Immigration and Customs Enforcement (“ICE”). Dkt. No. 7.
19 He requests that the Court order his release from custody, arguing that “such custody violates the
20 due process rights of the Petitioner.” *Id.* at 1.

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22 For the reasons set forth below, the Court recommends that petitioner’s habeas petition be
23 DENIED, and respondent’s motion to dismiss be GRANTED.

24 **II. BACKGROUND AND PROCEDURAL HISTORY**

25 Petitioner is a native and citizen of Mexico, who was admitted to the United States on
26 August 28, 1986, at age six as the child of a United States citizen. Administrative Record

1 (“AR”) at R5-19. On April 25, 2001, petitioner was convicted of the crime of false
2 imprisonment in violation of California law and was sentenced to three years in state prison. AR
3 at L115. The Department of Homeland (“DHS”) initiated removal proceedings against petitioner
4 charging him as subject to removal from the United States for having been convicted of an
5 aggravated felony under the Immigration and Nationality Act (“INA”). AR at L222-23.
6 Petitioner requested relief under INA § 310(g), claiming he derived citizenship from his father.
7 AR at L424. An Immigration Judge (“IJ”) held an evidentiary hearing and found that
8 petitioner’s father did not have ten years physical presence in the United States prior to
9 petitioner’s birth necessary for petitioner to derive citizenship. *Id.* On April 27, 2004, the IJ
10 found petitioner removable as charged and ordered him removed to Mexico. AR at L2.
11 Petitioner waived appeal and was removed from the United States the same day. AR at L2, L6.
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13 Petitioner illegally reentered the United States. DHS arrested petitioner, reinstated his
14 prior order of removal and removed him from the United States on November 2, 2004. AR at
15 L12-35. Petitioner illegally reentered the United States again, and was ordered removed again
16 on January 9, 2006. AR at L61-68. Petitioner illegally reentered the United States some time
17 after January 9, 2009. *Id.*
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19 On June 16, 2010, ICE initiated removal proceedings by filing a Notice to Appear after
20 discovering petitioner at the Yakima, Washington County Jail where he was incarcerated for a
21 probation violation. AR at L256, R490. Petitioner moved to terminate proceedings, arguing
22 again that he had derived citizenship through his father, and filed an N-600 Application for
23 Certificate of Citizenship. AR at L424, L273-79, L280-309. On January 11, 2011, petitioner
24 renewed his motion to terminate proceedings based on new evidence. AR at L162-78. On
25 March 17, 2011, the IJ issued an amended decision, finding that petitioner failed to present
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1 sufficient evidence that he had derived United States citizenship from his father and ordered him
2 removed to Mexico. AR at L419-25. Petitioner appealed the IJ's decision to the Board of
3 Immigration Appeals ("BIA"), which dismissed the appeal on December 20, 2011. Dkt. No. 14,
4 Ex. A. Accordingly, petitioner's order of removal became final on that date. INA §
5 101(a)(47)(B), 8 U.S.C. § 1101(a)(47)(B) (providing the order of the Immigration Judge "shall
6 become final upon the earlier of – (i) a determination by the Board of Immigration Appeals
7 affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek
8 review of such order by the Board of Immigration Appeals."). Petitioner did not file a Petition
9 for Review of the BIA's decision with the Ninth Circuit Court of Appeals.
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11 III. DISCUSSION

12 "When a final order of removal has been entered against an alien, the Government must
13 facilitate that alien's removal within a 90-day 'removal period.'" *Thai v. Ashcroft*, 366 F.3d 790,
14 793 (9th Cir. 2004) (citing *Xi v. INS*, 298 F.3d 832, 834-35 (9th Cir. 2002)); INA § 241(a)(1)(A),
15 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the *latest* of the following:
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17 (i) The date the order of removal becomes administratively final.

18 (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal
19 of the alien, the date of the court's final order.

20 (iii) If the alien is detained or confined (except under an immigration process), the date
21 the alien is released from detention or confinement.

22 8 U.S.C. § 1231(a)(1)(B) (emphasis added); *see also Khotessouvan v. Morones*, 386 F.3d 1298,
23 1300 n.3 (9th Cir. 2004) (stating that the 90-day removal period commences on "the date the
24 order of removal becomes final; the date a reviewing court lifts its stay following review and
25 approval of the order of removal; or the date the alien ordered removed is released from non-
26 immigration related confinement."). During the removal period, continued detention is required.

1 INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (“During the removal period, the Attorney General shall
2 detain the alien.”). Where removal cannot be accomplished within the ninety-day removal
3 period, detention beyond the removal period is authorized by INA § 241(a)(6), 8 U.S.C. §
4 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678 (2001).

5 In *Zadvydas*, the Supreme Court determined that the government is entitled to a
6 presumptively reasonable period of detention of six months to bring about the alien’s removal
7 from the United States. *Zadvydas*, 533 U.S. at 701. After this six month period, the alien is
8 eligible for conditional release upon demonstrating that there is “no significant likelihood of
9 removal in the reasonably foreseeable future.” *Id.*

10 In the present case, the BIA denied petitioner’s appeal of the IJ’s removal order on
11 December 20, 2011, thereby commencing the removal period. *See* INA § 241(a)(1)(B)(i), 8
12 U.S.C. § 1231(a)(1)(B)(i). Accordingly, petitioner’s ninety-day removal period will expire on or
13 about March 20, 2012, and the six month presumptively reasonable period will expire on or
14 about June 20, 2012. Accordingly, petitioner’s detention is lawful, and the Court must deny
15 habeas relief. *See Zadvydas*, 533 U.S. at 701.

16 IV. CONCLUSION

17 For the foregoing reasons, the Court recommends that petitioner’s habeas petition be
18 DENIED, respondent’s motion to dismiss be GRANTED, and that this matter be DISMISSED
19 with prejudice. A proposed order accompanies this Report and Recommendation.

20 DATED this 27th day of January, 2012.

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25 JAMES P. DONOHUE
26 United States Magistrate Judge